IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 70 of 1993

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL JAYANTILAL KANTILAL - Appellant(s)
Versus
PATEL JOITARAM LAXMICHAND - Defendant(s)

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Appearance :
MR PRAKASH K JANI for Appellant(s) : 1,
MR VC DESAI for Defendant(s) : 1,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 29/03/2007

ORAL JUDGMENT

This is an Appeal preferred under Section 100 of the Code of Civil Procedure by the plaintiff in Regular Civil Suit No.85/1983 against the judgment

and order dated 13th April, 1992 passed by the learned Extra Assistant Judge, Mehsana in Regular Civil Appeal No.108/88.

The appellant-plaintiff instituted the above referred Regular Civil Suit No.85/1983 in the Court of learned Civil Judge (J.D.), Siddhpur for recovery of a sum of Rs.4,000=00 and the interest of Rs.1,800=00. According to the plaintiff, the plaintiff and the defendant, the respondent herein were partners in one M/s.Dhanwantray P. & Co. at Unjha. The partners in the said firm agreed to dissolve the firm and to handover the management of the firm to the plaintiff. However, on 8th November, 1979 the plaintiff and the defendant entered into an agreement (Exh.61). It was decided that the said firm be dissolved with effect from Kartak Sud 1, Samvat Year 2036 (commencement of Samvat Year 2036 and the date prior to the date of the agreement) and that the dissolution deed be drawn within a year at convenience. The defendant became the manager and the owner of the said firm and that he would be responsible for any profit or loss of the firm. In

consideration the defendant agreed to pay Rs.2,000=00 to the plaintiff every year. It was also agreed that the said arrangement shall continue till some new arrangement was made. Pursuant to the said agreement, the defendant did pay a sum of Rs.2,000=00 to the plaintiff at the end of the Samvat Year 2036. Since then, he discontinued the payment. The plaintiff, therefore, claimed such annual payment for the Samvat Year 2037 (ending on 28th October, 1981) and Samvat Year 2038 (ending on 16th November, 1982) and the interest. The suit was contested by the defendant by written statement Exh.12. The defendant did admit the suit agreement Exh.61. He also admitted the payment of Rs.2,000=00 for the Samvat Year 2036. He, however, denied his liability to pay the suit sum of Rs.5,800=00 on the premise that the plaintiff had committed breach of agreement in as much as he had started the business in the same commodity i.e. tea and that he had made illegal use of the trade-mark.

The learned Civil Judge, by his judgment and decree dated 22nd August, 1988, dismissed the suit. According to the learned Civil Judge, the suit

agreement was a contract without consideration and was not a completed contract. The suit agreement, therefore, was not enforceable in Court of law. Feeling aggrieved, the plaintiff preferred the above referred Regular Civil Appeal No.108/1988 in the Court of learned District Judge, Mehsana. The Appeal was heard and decided by the learned Assistant Judge. The learned Assistant Judge was pleased to dismiss the Appeal by impugned judgment and order dated 13th April, 1992. The learned Assistant Judge was pleased to hold that the suit agreement was a completed contract and was enforceable at law. The learned Assistant Judge also held that the defendant was liable to pay a sum of Rs.2,000=00 to the plaintiff every year. However, in the opinion of the learned Assistant Judge the partnership firm M/s.Dhanwantray P. & Co. was not a registered firm. The suit against the unregistered firm or its partner was not maintainable. Reliance was placed on Section 69 of the Indian Partnership Act, 1932. Therefore, the present Appeal.

The Appeal is admitted to final hearing and the

following substantial question of law has been framed:-

"Does Section 69 of the Indian Partnership Act, 1932 apply to a dissolved Partnership Firm ?"

Mr.Jani has appeared for the appellant. He has assailed the finding of unregistered partnership recorded by the Court below. Mr.Jani has submitted that the defendant did not raise the plea in his written statement. In absence of such a plea and in absence of corresponding issue framed by the Court, the plaintiff had no opportunity to establish before the Court whether or not the partnership firm was registered. He has submitted that the finding recorded by the learned Assistant Judge is a mere assumption that the partnership firm was not registered. He has further submitted that as recorded in the suit agreement the partnership firm M/s.Dhanwantray P. & Co. was dissolved on commencement of Samvat Year 2036. In case of a claim against the dissolved partnership firm the provisions contained in Section 69 of the Indian Partnership Act

would not be attracted. In support of his contention, he has relied upon the judgment of the Bombay High Court in the matter of **Bhagwanji Morarji Goculdas v/s. Alembic Chemical Works Co. Ltd. and others** [AIR 1943 Bombay 385] followed by this Court in the matters of **M/s.Girjaprasad Sunderlal Agrawal and Others v/s. M/s.Motibhai Fulabhai Patel & Co. and Others** [1983 GLH (UJ) 27]; of **Gujarat Water Supply & Sewerage Board, Gandhinagar v/s. Sundardas Hukumatram Shivanani** [1991(2) GLR 825] and of **Kantilal Jethalal Gandhi v/s. Ghanshyam Ratilal Vyas** [1992(2) GLR 1297].

Mr.Desai has contested the Appeal. He has relied upon the plaint. He has submitted that in the plaint nowhere the plaintiff claimed that the partnership firm was a registered partnership firm. He has further submitted that the suit agreement was a unilateral agreement and was not enforceable in Court of law.

Sub-section (1) of Section 69 of the Indian Partnership Act, 1932 forbids a suit to enforce a

right arising from a contract or conferred by that Act in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm. This provision has been considered by the Bombay High Court in the above referred matter of Bhagwanji Morarji Goculdas. The Hon'ble Court has held that in case where the claim is lodged against the dissolved partnership firm or a partner in such dissolved partnership firm, the provisions contained in Section 69 of the Partnership Act would not be attracted. It has been further held that, "...**It cannot be disputed that damages for breach of contract are assets of the firm, and as such they can be realised by partners of the dissolved firm although the firm has not been registered.**"

I do agree with Mr.Jani that the finding recorded by the learned Assistant Judge in respect of the registration of the partnership firm

M/s.Dhanwantray P. & Co. was unwarranted and not supported by evidence on record. It was mere assumption of the learned Judge that the said partnership firm was not registered. Besides, having regard to the covenants in the suit agreement, it is apparent that the said partnership firm was dissolved with commencement of the Samvat Year 2036 i.e. prior to the date of the suit agreement. The plaintiff's claim against the defendant was one arising from the suit agreement and not from the partnership business. To maintain the suit whether the partnership firm was registered or not was of no consequence. In any view of the matter, it was a claim against a partner in the dissolved partnership firm. The plaintiff, therefore, could not have been non-suited.

For the aforesaid reasons, the Appeal is allowed with cost. The impugned judgment and order dated 13th April, 1992 passed by the learned Assistant Judge, Mehsana in Regular Civil Appeal No.108/1988 is quashed and set-aside. The judgment and decree passed by the learned Civil Judge (J.D.), Siddhpur in Regular Civil Suit No.85/1983 is also quashed and

set-aside. The Regular Civil Suit No.85/1983 is allowed. The plaintiff do recover a sum of Rs.5,800=00 with interest at the rate of 6% per annum from the date of the suit till the date of realisation.

(Ms. R.M.Doshit, J.)

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